SUPREME COURT

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FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1966

NO. 1213

ROBERT WILLIAM DELANEY,
Appellant,

-vs-

THE STATE OF FLORIDA,
Appellee.

APPELLEE'S MOTION TO DISMISS APPEAL

EARL FAIRCLOTH
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Appellee.

APPELLEE'S MOTION TO DISMISS APPEAL

Comes now the appellee, within thirty days after receipt of the appellant's Jurisdictional Statement, and shows unto the Court as follows:

As appears from the appellant's notice of appeal, which was filed on December 27, 1966, and a copy of which is included in the record, he appealed to this Court—

> ". . . *from the Final Judgment of the Circuit Court in and for Leon County, Florida, entered* in this action on *May 18, 1965*". (emphasis supplied)

The filing of said notice of appeal conferred no jurisdiction upon this Court to review said judgment of the Circuit Court of Leon County, Florida, because that court was not the highest court of the State of Florida in which a decision could be had, within the contemplation of *Title 28, Section 1257, United States Code.* The Supreme Court of Florida was the highest court of Florida in which a decision could be had, as witness the fact that said judgment was actually appealed to the Supreme Court of Florida and affirmed by it on September 28, 1966 (*Robert William Delaney v. State of Florida*, 190 So.2d 578).

The filing of said notice of appeal conferred no jurisdiction upon this Court to review said judgment of the Circuit Court of Leon County, Florida, for the further reason that it was filed on December 27, 1966, one and one-half years after the entry of said judgment on May 18, 1965.

Nor does said notice of appeal confer jurisdiction upon this Court to review said judgment of the Supreme Court of Florida. The appellant's Jurisdictional Statement (p. 1) says that "Appellant appeals from the judgment of the Supreme Court of Florida filed September 28, 1966 and set forth hereinbelow . . .", but it is manifest from said notice of appeal that the appeal was not from that judgment. The notice of appeal does not even hint at appealing from that judgment; to the contrary, it resolutely ties the appeal to the judgment of the Circuit Court of Leon County, Florida.

Furthermore, even if the unstated intention of the appellant was to appeal from the judgment of the Supreme Court of Florida, the appeal would still be subject to dismissal because the notice of appeal did not designate said judgment as the one being appealed from, as is required by the following portion of this Court's Rule 10:

> "2. The notice of appeal . . . shall designate the judgment or part thereof appealed from, giving its date and the time of its entry; . . ."

and because the same Rule 10 provides that:

> ". . . A failure to comply with these requirements will be a sufficient reason for dismissing the appeal. . . ."

WHEREFORE, the appellee moves the Court to dismiss the appellant's appeal.

Respectfully submitted,

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PROOF OF SERVICE

I, Reeves Bowen, one of the attorneys for the State of Florida, appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of April, 1967, I served a copy of the foregoing Appellee's Motion To Dismiss Appeal on Robert William Delaney, the appellant herein, by mailing the same in a duly addressed envelope, with airmail postage prepaid, to Honorable Alfred I. Hopkins, attorney of record for Robert William Delaney, appellant herein, 1701 Meridian Avenue, Miami Beach, Florida.

REEVES BOWEN
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